failure in logic consequent upon the impossibility of distinguishing this case from those in which a retrial is permitted after a miscarriage of justice because of disagreement of the jury, or mischance happening to the court, or similar cause. *Com. v. Purchase*, 2 Pick, 521; *People v. Webb*, 38 Cal. 467. The better view, and that which has been supported by the English courts and certain of those of the states, and has been favored by the Federal judges, is that only a verdict can constitute jeopardy. *Reg. v. Charlesworth*, 9 Cox. C. C., 44; *People v. Goodwin*, 18 Johns. 187; *U. S. v. Haskell*, 4 Wash. (U. S.) 402; *U. S. v. Gilbert*, 2 Lumn. (U. S.) 19.

And, as Justice Holmes argues, even a verdict ought not to suffice, where resort is made to an appellate court for its reversal. That it does, where the prosecution alleges the error, is perhaps too firmly established by repeated decisions to admit of change. *U. S. v. Sanges*, 144 U. S. 310. That it does not, where the prisoner sues out the writ, is equally clear. The cases are distinguished on the ground either that by himself seeking the reversal, the prisoner has waived his right of exemption from another trial, *People v. McKay*, 18 Johns. 212; or that the miscarriage of justice has prevented any such jeopardy as the maxim regards. *Com. v. Roby*, 12 Pick. 502. But, as to the former, Justice Holmes points out that it is very doubtful whether the fundamental guarantees of the constitutions can be waived. *Thompson v. Utah*, 170 U. S. 343. And, for the latter, it is difficult to perceive why an error resulting in a failure of justice to the prisoner's advantage, does not equally with one to his advantage, prevent the consummation of the jeopardy. The true basis of the granting of a new trial would seem to be that an appellate proceeding merely continues the cause; *Watrous v. Johnson*, 24 How. 205; and that jeopardy is not complete until a verdict is reached which finally concludes the merits of the case. *State v. Lee*, 65 Conn. 265. The logical, if impractical, conclusion, then, is that the state should have the right to secure the reversal of an erroneous acquittal.

LEGISLATION AGAINST GREAT COMMERCIAL COMBINATIONS.

The report made at the last meeting of the American Bar Association by the Committee on Commercial Law, dealing, as it does, with the very timely topic of legislation to curb the abuses arising from great aggregations of capital, has challenged the attention of the legal fraternity. Surely the position taken by the committee is too radical. The picture which, as an introduction, it draws of a "General Industrial Company," which is to embrace all the business of the country, selling all products for what it wills, buying its labor as it chooses, far transcends the bounds of possibility, for it disregards those economic laws which require for labor a living wage, and which decree that, as the inability to purchase an article increases, its price decreases; those laws of human nature which limit the

field that the executive brain of man can compass; those laws of progress which are building up, over against the combinations of capital, equally powerful combinations of labor. The remedy which it advocates—doubtless, under the decision in *McCulloch v. Maryland*, 4 Wheat. 316, legally possible—that corporations engaged in interstate commerce shall be incorporated by the Federal authority, and that other, of doubtful validity, that the Federal government, in order to maintain the principle of competition, shall, in the last resort, itself become a general producer, would be long strides in the growth towards centralization of government which now seems to threaten our political system. Nor would the assertion that the Sherman Act has reached the limit of its usefulness commend itself to the judges who dissented from the decision in the *Northern Securities Case*, 193 U. S. 197. Yet in two respects the report is worthy of close attention—on the one hand, for its originality; on the other, for its wisdom. In the first place, its proposition that gigantic combinations of wealth shall be prevented by requiring a franchise fee which shall increase in proportion to a greater capital; that in very truth the power to tax shall involve the power to destroy, violates no constitutional provision. Yet, after all, the danger threatens not so much from great single organizations, as from the absorption and combination of several corporations. Quite as efficacious, perhaps, would be a stronger enforcement of the Sherman Act, affecting, as it does, existing bodies as well as those of the future, and a closer check upon the ability of one corporation to obtain the shares of another. Secondly, the report does well to emphasize, as least by implication, the principle that a stronger light of publicity must be thrown upon the affairs of these combinations. As this has influenced the more recent legislation, so must it lie at the basis of all future reform. 32 *Stat. at L.*, I. Ch. 552; 25 *Stat. at L.*, Ch. 382.

THE GEORGIA CHAIN-GANG FOR PETTY OFFENSES.

The creators of our Federal Constitution would doubtless be greatly surprised, and many of them deeply grieved, could they arise and view the Fourteenth Amendment and its results. They might feel, with some reason, that the fine balance they established between central power and local freedom is being rudely shaken and that the prospects of its restoration to an even level are far from bright. And they would find that not a few among the men of to-day look on the Fourteenth Amendment as a source of serious national problems.

For better or for worse, we have entered on a new era of our national existence, by attempting the "benevolent assimilation" of races whose customs and conditions of life are radically at variance with our own. We have found that some of our most beneficent institutions are for the present, at least, unsuited to their use. For example, the jury system for crim-